



Kirkpatrick & Lockhart Nicholson Graham LLP

State Street Financial Center  
One Lincoln Street  
Boston, MA 02111-2950  
617.261.3100  
Fax 617.261.3175  
www.klmg.com

April 19, 2006

**By E-Mail and First-Class Mail**

Gary S. Starr, Esq.  
Shipman & Goodwin LLP  
One Constitution Plaza  
Hartford, CT 06103-1919

Michael DeMarco

617.951.9111  
Fax: 617.261.3175  
mdemarco@klmg.com

**Re: In re Pharmaceutical Industry Average Wholesale Price Litigation  
MDL 1456**

Dear Gary:

On March 28, 2006, we agreed that NHIC would produce the following items on or before April 10, 2006:

- The contracts between BCBSMA and CMS and NHIC and CMS to provide Part B carrier services for Massachusetts;
- Any agreements between BCBSMA and NHIC concerning the transfer of the Part B carrier business from BCBSMA to NHIC in 1997-1998;
- Organizational charts for the Part B carrier business from at least 1997-2005, to the extent that such documents exist;
- All claims manuals and any written guidelines for its Medicare Part B reimbursement payments to providers; and
- The identity of all sources utilized to determine AWP's for the subject drugs as set forth in our October 2005 subpoenas.

On April 17, 2006, we received 694 pages of documents and a transmittal letter representing that this set of documents contained the first three items listed above. This production, however, does not appear to contain any contracts between BCBSMA and CMS or any agreements between BCBSMA and NHIC concerning the transfer of the Part B carrier business from BCBSMA to NHIC. If we are mistaken, please identify by bates number the documents responsive to these requests. Otherwise, please immediately produce these documents or a declaration describing with particularity NHIC's efforts to identify and confirming its inability to produce these documents. Furthermore, NHIC needs to immediately produce materials responsive to the last two categories listed above.



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With respect to NHIC's production of documents in response to our October 27, 2005 subpoena, our attempts to assist NHIC with the search for responsive documents are proving to be unworkable. This is due in no small part to NHIC's refusal to produce indices that appear to be readily available to it, as well as the imprecise nature of the indices themselves. For example, while searching last week for responsive documents among the 121 boxes identified as "Medicare Part B Pricing" records, we had to sift through thousands of pages of records related to Medicare Part A as well as numerous documents involving non-Medicare claims.

Consequently, NHIC needs to identify and produce without any further delay documents responsive to the October 27, 2005 subpoena. In our on-going effort to reach a mutually agreeable scope of production, we request for now that NHIC produce documents responsive to the areas of inquiry for which it has agreed to produce 30(b)(6) designees, which would include the following:

- any work done relating to surveys of physicians regarding their Medicare Part B drug acquisition costs, including preliminary questionnaires, information received from physicians, and any related information prepared, gathered or received by BCBSMA as the Massachusetts Part B carrier. This includes actions taken and information gathered in response to the March 14, 1994 directive from CMS requesting such surveys;
- why and how often submitted charges from and reimbursement payments to physicians deviated from the statutory AWP ceilings for Part B covered drugs from 1991-2004, including the carrier's discretion to set reimbursement amounts;
- whether it is possible to determine from the Massachusetts Medicare Part B records for 1991-2004 maintained by NHIC if the submitted charges for part B covered drugs were based upon AWP; and
- the volume of Part B claims from 1991 to 2004 for Massachusetts and the quantity of providers that submitted such claims.

Such documents would be responsive in part to items 1-6, 15, 17-18, and 26-27 among the list of documents to be produced as set forth in the October 27, 2005 subpoena and would include any and all Medicare Part B fee schedules for physician administered drugs. We will reimburse NHIC for the costs of retrieving responsive records from its archives and for copying costs up to 10 cents per page. Please let us know by 4:00 pm EDT, April 20, 2006 whether and when NHIC will produce these documents. We will otherwise deem our meet and confer obligations satisfied and take the necessary steps to bring this to the attention of the court.



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Relatedly, and as per our discussion on March 28, 2006, our agreement to pay reasonable costs for retrieval and copying and for the paralegal time incurred by NHIC for the review of the BCBSMA cost center 9132 records was with the understanding that logistical and administrative details, including per page and per hour cost amounts, would subsequently be worked out between us. Prior to the production and review of these documents, and as memorialized in my letter to you of April 11, 2006, we agreed to specific hourly rates and caps on paralegal and attorney time related to the review of these documents for privilege. The time to take issue with our understanding that an agreement had been reached was prior to our arrival in Hingham, Massachusetts for the review of these documents and has long since passed.

With respect to the depositions of NHIC's 30(b)(6) designees, BCBSMA has stated that it is communicating with you and the designees to determine whether it will likewise designate them to testify on its behalf. We discussed this with Steve Coco, counsel for BCBSMA, last week and wrote him today, with a carbon copy to you, requesting that BCBSMA confirm that Darlene Murphy and Deborah Johnson will also serve as its designees for the areas of inquiry set forth in your letter of April 14, 2006. Once we confirm that these witnesses will serve as designees for both BCBSMA and NHIC, following our receipt of the documents that NHIC previously agreed to produce by April 10, 2006 and upon resolution of our request that NHIC produce documents responsive to the very same areas of inquiry for which these witnesses are to testify, we will schedule these depositions.

Finally, I remind you that NHIC is to produce by this Friday, April 21, 2006, the electronic claims data as set forth in your April 6, 2006 letter to me.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Michael DeMarco', with a long, sweeping horizontal line extending to the right.

Michael DeMarco

MDM/AEB/gmf

cc: James P. Muehlberger, Esq.  
Nicholas P. Mizell, Esq.  
Michael D. Ricciuti, Esq.  
Aimée E. Bierman, Esq.  
Leslie M. Stafford, Esq.  
Andy J. Mao, Esq.  
Benjamin M. Wattenmaker, Esq.